

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT FRANCIS ICEBERG,

Case No. C20-1595RSM

Plaintiff,

ORDER REVOKING IN FORMA PAUPERIS ON APPEAL

V.

KING COUNTY SUPERIOR COURT, et al.,

Defendants.

This matter comes before the Court on a referral from the Ninth Circuit Court of Appeals to determine whether in forma pauperis (“IFP”) status should continue on appeal. Dkt. #38. Pro se Plaintiff Scott Francis Iceberg was granted leave to proceed in forma pauperis in this matter on December 14, 2020. Dkt. #8.

Where, as here, a party was permitted to proceed IFP in the District Court, the party may proceed on appeal in forma pauperis without further authorization unless the District Court certifies in writing that the appeal is not taken in good faith or that the party is not otherwise entitled to proceed IFP. Fed. R. App. P. 24(a)(3); 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”). An appeal is taken in “good faith” where it seeks review of at least one issue or claim that is found to be “non-frivolous.” *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is “frivolous” where it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Legally frivolous claims are those “based on an indisputably meritless legal theory,” such as claims against defendants who are immune from suit or for infringement of a legal interest that clearly does not exist. *Id.* at 327.

1 In this case, Plaintiff states he is “a disabled individual who was denied any
2 accommodation necessary to access the King County Superior Court in the matter of Iceberg v.
3 Greenthumb, and is currently being denied any accommodation necessary to access the King
4 County Superior Court in the matter of Iceberg v. University of Washington.” Dkt. #15 at 1.
5 He argues he was denied the reasonable accommodation of the appointment of counsel,
6 although King County Superior Court has provided an attorney to other disabled individuals.
7 He also claims he was denied the reasonable accommodation of the appointment of a
8 psychologist. He brought causes of action for violations of the Americans with Disabilities Act
9 (“ADA”), the Rehabilitation Act, and the Washington Law Against Discrimination (“WLAD”),
10 as well as constitutional claims for denying him access to the courts. *Id.* at 7–8. Plaintiff sought
11 \$100,000 in monetary damages and retrospective declaratory relief against King County, Judges
12 Regina Cahan and Suzanne Parisien, and superior court Deputy Chief Administrative Officer
13 Linda Ridge.

16 In January 2020, Plaintiff filed a complaint in King County Superior Court against
17 defendant Green Thumb Gardening, LLC, alleging public nuisance and outrage. *See* Dkt. #19
18 (“Declaration of John R. Zeldenrust”), Exhibit 1(a). Plaintiff alleged Green Thumb, in the
19 course of performing landscaping duties for the Trillium Apartments (where he apparently
20 resides), obstructed fire hydrants and fire lanes at the apartment complex, posing an “imminent
21 threat” to the health and safety of the residents. *Id.* Plaintiff alleged that he is disabled, and
22 suffers from “PTSD, Panic Disorder, Generalized Anxiety Disorder, Major Depressive
23 Disorder, and Severe Ulcerative Colitis.” He asserted that Green Thumb’s actions aggravated
24 his disabilities. Iceberg requested \$100,000 in damages. *Id.*
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1 Plaintiff filed a request seeking the appointment of counsel under state court rule GR 33.
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3 Iceberg's GR 33 accommodation request was assigned to King County Superior Court Judge
4 Regina Cahan, who denied it on February 18, 2020. *Id.*, Ex. 1(c) at 4. Judge Cahan found that
5 Plaintiff had been able to file "well organized, articulate written responses" and that he had "a
6 history of filing lawsuits, demonstrating his ability to access the court." *Id.* at 3. Judge Cahan
7 determined that "GR 33 was not intended as a mechanism for litigants with limited income or
8 mental health challenges to obtain court-appointed attorney[s] in civil lawsuits," and that
9 appointing counsel would impose an undue financial burden for the court. Judge Cahan further
10 determined that GR 33 "does not appear to . . . contemplate appointing a clinical psychologist
11 for Mr. Iceberg." *Id.*, Ex. 1(c) at 3–4.
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13 Defendant Green Thumb moved to dismiss Iceberg's complaint under Civil Rule
14 12(b)(6) for failure to state a claim. *Id.*, Ex. 1(e). By order dated March 10, 2020, the superior
15 court granted Green Thumb's motion and dismissed the case with prejudice. *Id.*, Ex. 1(f).

16 On May 19, 2020, Iceberg filed a second action, this time against the University of
17 Washington. *See* Iceberg v. University of Washington, KCSC # 20-2-09079-4 SEA. The case
18 was assigned to Judge Kenneth Schubert. *Id.*, Ex. 2(b). Plaintiff again requested the
19 appointment of counsel as a reasonable accommodation under GR 33. By order dated July 1,
20 2020, Judge Schubert denied Iceberg's request for essentially the same reasons cited by Judge
21 Cahan in Iceberg v. Green Thumb. *See* *Id.*, Ex. 2(c).
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23 On February 4, 2021, this Court issued an Order finding that Plaintiff failed to allege
24 sufficient factual matter, accepted as true, to state a claim to relief under the ADA, WLAD, or
25 U.S. or Washington State Constitutions. Dkt. #32. This Court dismissed all claims brought
26 against judges and court staff as barred under the doctrine of judicial immunity and the Eleventh
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1 Amendment. The Court found that Plaintiff cited no case finding that a court violated the ADA,
2 WLAD, or Washington or U.S. Constitutions for failing to provide an attorney or psychologist
3 as a reasonable accommodation. The Court found that, given judicial immunity, “it is perhaps
4 impossible for King County to be liable for the rulings of its judges on GR 33 motions, such
5 liability not been established here, and in any event the pleading does not demonstrate that the
6 judges here violated these laws.” *Id.* at 6. The Amended Complaint and judicially-noticed
7 documents show that Judges Cahan and Schubert conducted a fact-specific investigation to
8 determine the appropriate accommodation under the circumstances and determined that a) that
9 Plaintiff did not have a problem accessing the court and b) the cost of appointing an attorney or
10 psychologist was not feasible. The record demonstrates that Plaintiff has been able to access the
11 state court and this District Court multiple times, without the aid of counsel. The Court found
12 that Plaintiff’s Amended Complaint failed to contain sufficient factual matter, accepted as true,
13 to state a claim to relief under these laws that is plausible on its face.

14 More importantly for ruling on the instant issue, the Court found that “Plaintiff is not
15 suing the remaining Defendant King County for some county policy denying him access to the
16 court, he is suing because he disagrees with the rulings of Judges Cahan and Schubert.” *Id.* at 7.
17 The Court declined to weigh in on whether GR 33 was properly applied in the underlying cases
18 and advised Plaintiff that he could appeal the state court decisions directly.

19 For the reasons set forth above, the Court believes that any appeal of this ruling
20 necessarily lacks an arguable basis in law or in fact. The Court cannot find that Plaintiff’s
21 appeal has been taken in good faith, and maintains that, by its assessment of the Amended
22 Complaint and judicially noticed documents, Plaintiff’s claims are clearly frivolous.

1 Accordingly, the Court hereby FINDS AND ORDERS that Plaintiff's in forma pauperis
2 status is REVOKED.

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4 DATED this 9th day of February, 2021.

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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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